

Department of Permits and Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204  
Baltimore County, Maryland

In the Matter of

Civil Citation No. 69637

Joseph Openden  
P O Box 32130  
Baltimore, MD 21282

722 Walker Avenue

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Baltimore County Code Enforcement Hearing Officer on December 16, 2009 and January 12, 2010 for Hearings on a citation for violations under the Baltimore County Zoning Regulations (BCZR) section 408B, failure to cease illegal rooming/boarding house on residential property zoned DR 5.5 known as 722 Walker Avenue, 21212.

On December 16, 2009, pursuant to Baltimore County Code §3-6-205, Inspector Jeffrey Radcliffe issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1<sup>st</sup> class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$12,200.00 (twelve thousand two hundred dollars).

The following persons appeared for the Hearing December 16, 2009 and testified: Karl Niedermeyer, Complainant, and Jeffrey Radcliffe, Baltimore County Code Enforcement Officer.

The following persons appeared for the Hearing January 12, 2010 and testified: Joseph Openden, Respondent, Chris Sillars, neighbor, and Jeffrey Radcliffe, Baltimore County Code Enforcement Officer.

After proper consideration of all the evidence and testimony presented, the Hearing Officer finds:

A. A Correction Notice was issued on October 17, 2009 for illegal rooming/boarding house; abate nuisance and remove accumulations of debris; remove all trash and debris; store garbage in containers with tight lids. This Citation was issued on December 6, 2009.

B. The Hearing on this Citation was prescheduled for December 16, 2009. Respondent wrote to the Department on December 14, 2009 and telephoned on December 15, 2009 requesting that the Hearing be rescheduled because he was scheduled to be out of town from December 15th-21st. Notes in the file state that Respondent was advised by the Department on December 15, 2009 that the Hearing would not be canceled. This Hearing was convened on December 16, 2009 with testimony heard and recorded from the complainant and the inspector; the Hearing was continued on January 12, 2010.

C. At both Hearings, Inspector Jeff Radcliffe testified that he knocked on the door on October 17, 2009 and found four male college students present; one student wrote down the names of all four residents and stated that none were related to each other. Inspector Radcliffe testified that he visited the property again on December 6, 2009 and saw two males entering the property; one of them answered the door and said they did not live there, and that none of the four residents were home.

D. Karl Niedermeyer is a neighbor who lives on Banbury Road. He testified at the December 16, 2009 Hearing that he has spoken to the young men and that they admit there are four residents. They are fraternity brothers and this is effectively their frat house. There are some parties and some gatherings for fraternity rituals, with their friends visiting. The property was vacant until the students moved in.

E. Chris Sillars is another neighbor who lives on Banbury Road. He testified at the January 12, 2010 Hearing that he has monitored and kept a log of the license plates of vehicles parked at this property. Every morning at 6:30 a.m. from November 14, 2009 to December 10, 2009, he has recorded what vehicles were parked. There were never fewer than three, and sometimes four, five, or six cars. His typed log recording twelve different vehicles is in the administrative file.

F. Respondent Joseph Openden appeared at the January 12, 2010 Hearing. He testified that he and his wife bought two houses over a year ago intending to fix them up and sell them. He further testified that when they couldn't sell this house, he listed it with a realtor and obtained a County Rental Housing License and rented it out. He provided a copy of the lease, dated May 19, 2009, showing two named tenants and leasing the property for two years at a rent of \$1,800.00 per month. The lease further provides, "Tenant covenants and agrees that the Property shall be occupied only by the following person(s), and by no other persons: Grayson Gable and Max Gorman." Section 6. The lease lists "Yena and Joe Openden" as the "listing associate" acting as the listing broker and owner's agent. Thus, Respondent is both the owner of the property and the professional property manager responsible for the property.

G. Respondent Openden testified that he received the Correction Notice and addressed the trash storage problem promptly. He further testified that his tenants told him there were two tenants, and that he did not have any knowledge that there was a problem. He had a next door neighbor watching the house for him who did not call. He further testified that after he returned from his December trip, he sent a letter to the two tenants notifying them that adding additional tenants was in breach of the Lease. This letter, dated January 7, 2010, states, "As a result, you are in breach of our Lease. We therefore request that any adults living in the premises, not listed on the Lease, vacate immediately. If you fail to rectify this matter and continue to be in breach of our Lease, you will be asked to leave."

H. Respondent further testified that the tenants have agreed to move out and that the two named tenants will also leave because they have told him they cannot afford the house by themselves. Respondent Openden requested time to correct the violation, until February 1, 2010, and requested that a civil penalty not be imposed because he cannot afford to pay a penalty. Inspector Radcliffe noted that the students are away on winter break.

I. Baltimore County's zoning regulations restrict the number of unrelated adults who can occupy a house for compensation. Because this is not the owner's domicile, the house can only be occupied by two unrelated adults absent a permit for a boarding- or rooming-house. BCZR Section 101.1; Section 408B. Based on the evidence presented, an illegal boardinghouse with more than two

tenants has been operating at this location for several months, and certainly has been operating since the inspector's first visit on October 17, 2009.

J. Respondent Joseph Openden leased the house to two students and claims that he did not know about or authorize any additional tenants. Respondent also claimed at this Hearing that he relied on a real estate professional to lease the property and that the realtor brought the application to him for approval. However, the lease documents show that Respondent is himself in the real estate business and that he was the listing associate for the listing broker, Baltimore Residential LLC. Review of state records from the Maryland Department of Assessments and Taxation shows that Respondent is the Resident Agent for Baltimore Residential LLC, a company organized in 2004 "to provide real property management services to investors and owners of real property in Maryland...." Review of state records further shows that the company's corporate status is "forfeited," but Respondent sent his warning letter to the tenants on company letterhead.

K. There is no direct evidence that Respondent was collecting rent directly from the additional residents or had given formal permission for their tenancy. However, Respondent either knew or should have known that there were more than two college students living in this house. Respondent should have monitored the property more closely and should not have permitted additional tenants beyond the two who signed the lease. At a minimum, Respondent should have investigated and corrected the violation after receiving the County's Correction Notice in October of 2009. Relying on an unnamed neighbor to call does not constitute sufficient oversight or management of a residential rental property. Even after receiving the Citation, Respondent failed to take action to correct the violation other than to send a letter dated January 7, 2010 giving the tenants notice that they have breached the Lease and requesting that additional residents vacate the property.

L. The County's Citation for this zoning violation will therefore be enforced, and a civil penalty imposed. Because compliance is the goal of code enforcement, the civil penalty will be reduced if the zoning violation is corrected within the time provided below.

IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty be imposed in the amount of \$6,000.00 (six thousand dollars).

IT IS FURTHER ORDERED that the civil penalty will be REDUCED to \$2,000.00 (two thousand dollars) if the violation is corrected by February 16, 2010, with re-inspection finding the property occupied by no more than the permitted number of unrelated tenants.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty as authorized above shall be imposed as a lien upon the property.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 26<sup>th</sup> day of January 2010

Signed: ORIGINAL SIGNED  
Margaret Z. Ferguson  
Baltimore County Hearing Officer

**NOTICE TO RESPONDENT:** The Respondent is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Respondent may make written application to the Director of the Department of Permits & Development Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.